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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1707

OHIO BUREAU OF EMPLOYMENT SERVICES
and
ALBERT G. GILES,

Appellants

VS.

LEONARD PAUL HODORY,

Appellee

On Appeal from the United States District Court For the Northern District of Ohio, Eastern Division

MOTION FOR LEAVE TO FILE BRIEF ON THE MERITS, BY REPUBLIC STEEL CORPORATION AS AMICUS CURIAE

WALTER J. MACKEY
MACKEY, MACKEY & SAAD
1480 West Lane Avenue
Columbus, Ohio 43221
Telephone (614) 486-1655
Attorney for
Republic Steel Corporation
as Amicus Curiae

RONALD CULP, P.O. BOX 26, WORTHINGTON, OHIO 43085 (614) 846-7025

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Republic Steel Corporation respectfully moves for leave to file a brief Amicus Curiae on the merits in this case pursuant to Rule 42(3). Attorney for Appellant has consented to filing of such a brief, attorneys for Appellee have not. Its brief is in support of the position of Appellant.

A motion by Republic Steel Corporation for leave to file a brief as Amicus Curiae on the jurisdictional issue was allowed by the Court and its brief was duly filed with the Court.

Republic Steel Corporation has an interest in this case. The decision of the Three Judge District Court allowed unemployment benefits to some five hundred eighty of its employees, included as a part of the class with Hodory, Appellee herein, whose claims for benefits had been denied by the Administrator of the Ohio Bureau of Employment Services.

Under Ohio law, (Sec. 4141.28 (G) (4) R.C.) benefits paid to Republic Steel Corporation's employees are charged to its account with the Bureau and under the state's experience rating system will be paid by Republic Steel Corporation through an increase in its payroll tax for unemployment compensation.

The decision of the Administrator of the Ohio Bureau of Employment Services denying benefits to the Plaintiffs-Appellees was appealed to the Board of Review where the claims are now pending but are being stayed pending a final decision in this case.

Republic Steel Corporation is an interested party in these cases now under appeal with the Board of Review. (Sec. 4141.01 and Sec. 4141.28 Revised Code of Ohio).

Appellees have an adequate remedy under state law which they have not exhausted.

Republic Steel Corporation was not made a party in the instant case, was denied an opportunity to appear and present evidence as to the economic impact on it resulting from the payment of benefits and was not permitted to intervene. This constitutes a denial of procedural due process under the Fifth Amendment.

The provision contained in Sec. 4141.29 (D) (1) (a) Ohio Revised Code denying benefits to claimants whose unemployment is due to a labor dispute is a reasonable exercise of the police power of the state.

The Ohio Legislature, in exercising its choice of beneficiaries under the state unemployment compensation program, denies benefits to individuals who are unemployed due to a labor dispute even though such persons are not actually participating, financing or directly interested in the dispute. This fulfills a legitimate and reasonable state purpose and maintains the state's neutrality in labor disputes.

Increased benefit payments to a class of beneficiaries not now contemplated in the state law would unjustly increase the tax burden on employers and could jeopardize the solvency of the Ohio Unemployment Trust Fund.

Although Republic Steel Corporation supports the arguments and conclusions contained in the excellent Brief of the Attorney General on behalf of the appellants herein, the interests of the Bureau of Employment Services cannot be the same as that of the Republic Steel Corporation, and therefore its interests are not adequately represented by the Appellants in this case.

The principle that a governmental agency cannot adequately represent the interests of a private party has been expressed in the case of *Trbovich v. United Mine Workers*, 404 N.S. 528, at 538 (1972).

For the foregoing reasons, Republic Steel Corporation respectfully requests that this motion for leave to file a brief on the merits as Amicus Curiae be granted.

Respectfully submitted,

WALTER J. MACKEY
1480 West Lane Avenue
Columbus, Ohio 43221
614-486-1655
Attorney for
Republic Steel Corporation